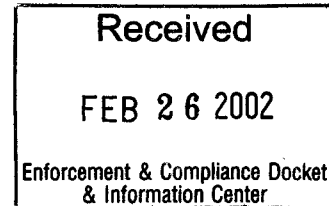


**COMMENTS ON PROPOSED ESTABLISHMENT OF ELECTRONIC
REPORTING; ELECTRONIC RECORDS RULE**
Cross-Media Electronic Reporting and Recordkeeping Rule (CROMERRR)

February 18, 2002



U.S. Environmental Protection Agency
Enforcement & Compliance Docket and Information Center
Mail Code 2201A
Attn: Docket Number EC-2000-007
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Stakeholder Comment on the U.S. EPA's Proposed
Cross-Media Electronic Reporting & Recordkeeping Rule

Gentlemen:

On behalf of the Ohio Oil & Gas Association, thank you for the opportunity to submit comments and recommendations on the U.S. EPA's proposed Cross-Media Electronic Reporting & Recordkeeping Rule issued on August 31, 2001.

The Ohio Oil & Gas Association is a statewide organization representing hundreds of producers, contractors, allied industries, professional members, associates and royalty owners throughout the state of Ohio. We currently have approximately 1,300 members, and are one of the largest memberships of any state oil and gas association. The Association is the primary representative of Ohio's oil and gas producers and is often their primary source of information on industry trends, activities, tax changes, legislation and regulatory matters. As a consequence, the Association and its members have a direct interest in U.S. EPA's proposal to establish an electronic reporting and recordkeeping rule.

The Ohio Oil & Gas Association strongly opposes the U.S. EPA's proposed reporting and recordkeeping requirements. The rule as proposed would be mandatory in practical effect and, as a consequence, would impose onerous burdens and considerable costs without conferring any benefit upon the Association's members. In addition, because the Association's members are already obligated to maintain and submit these records to the Ohio Department of Natural Resources, the Association maintains that its members should be exempt from the U.S. EPA's proposed rule.

Although the proposed rule depicts the recordkeeping requirements as voluntary, an examination of their terms reveals that the provisions are, in fact, mandatory in their application. The proposed rule states that under the proposal, "electronic document submission or electronic recordkeeping will be totally voluntary."¹ However, this statement conflicts with the plain language of the proposed rule, which has a remarkably broad application and impact.

By way of example, under the proposed regulatory language, an "electronic record" includes "any combination of text, graphics, data, audio, pictorial, or other information represented in digital form that is created, modified, maintained, archived, retrieved or distributed by a computer system."² The Association's members routinely store their data and information on computers. In fact, because of the nature of the industry, most oil and gas producers have little choice but to collect and store their data electronically. Consequently, the practical application of the definition is that virtually every record created or maintained electronically – even if it is stored temporarily and printed at a later date – would be considered an electronic record and each of the Association's members would be considered a "regulated entity"³ subject to the proposed rule.

As regulated entities, the Association's members would incur substantial costs in order to meet the U.S. EPA's recordkeeping requirements. Most existing computer systems would not be deemed "acceptable electronic record-retention systems."⁴ Most computers do not have the capacity to generate time-stamped audit trails nor can they generate and maintain accurate and complete electronic records in a form that may not be altered without detection. As a result, entire networks and systems would have to be replaced or significantly upgraded with expensive and complex features in order to provide the required system controls.

The U.S. EPA vastly underestimates the average annual cost for regulated entities to implement new electronic recordkeeping systems. Some have compared the work required to effectuate these changes to the effort needed to address past Y2K issues. Depending on the size of the system and whether it's necessary to upgrade or completely replace the system, it could cost between \$4 million and \$20 million to meet the rule's requirements. These costs are 100% to 500% greater than the U.S. EPA's \$40,000 estimate.⁵

¹ See 66 Fed. Reg. 46,162 (Aug. 31, 2001).

² *Id.* at 46,189.

³ *Id.* at 46,190.

⁴ *Id.*

⁵ *Id.* at 46,178

The U.S. EPA could have avoided these problems by following the OMB's guidance in implementing the Government Paperwork Elimination Act as it was obligated to do. Had the U.S. EPA conducted the requisite risk assessment and cost-benefit analysis on its anti-fraud provisions, provisions that are far less onerous and costly could have been incorporated into the proposed rule. To require the highest level of security for even the most routine records clearly is excessive. The U.S. EPA's "one size fits all" approach simply cannot be justified considering the risks and consequences of fraud in this area.

Accordingly, the Ohio Oil & Gas Association is strongly opposed to the U.S. Environmental Protection Agency's proposed electronic reporting and recordkeeping rule. The proposed rule has numerous flaws and it would constitute an extreme burden in light of the fact that the Association's members are already obligated to maintain and submit these very same records and documents to a state regulatory body. Accordingly, the Association respectfully requests that the proposed rule be withdrawn or, in the alternative, that the Association's members be made exempt from the proposed rule.

Very truly yours,



Thomas E. Stewart
Executive Vice President
Ohio Oil & Gas Association

JCB/jcb